

IMPORTANT CONFIDENTIALITY NOTICE

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally protected. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone (collect) to arrange for return of the telecopied document to us.

TO: Mail Stop Appeal Brief - United States Patent and Trademark Office **RECEIVED**
Fax No. 571-273-8300 Phone No. **CENTRAL FAX CENTER**
NOV 29 2006

FROM: Pam Lolli (Typed or printed name of person signing Certificate)

Fax No. 513-626-1355 Phone No. 513-626-1673

Application No.: 09/902,048

Inventor(s): Michael Lee Vatter

Filed: July 10, 2001

Docket No.: 8163L

Confirmation No.: 7755

FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on November 29, 2006 to the above-identified facsimile number.

Pam Lolli (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:**

- 1) Amended Appeal Brief to comply with Notice of Non-Compliant Appeal Brief dated October 18, 2006 - 10 pages

Number of Pages Including this Page: **11**

Comments:

****Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

RECEIVED
CENTRAL FAX CENTERIN THE UNITED STATES PATENT AND TRADEMARK OFFICE **NOV 29 2006**

Application No. : 09/902,048
Inventor : Michael Lee Vatter
Filed : July 10, 2001
Art Unit : 1617
Examiner : Shengjun Wang
Docket No. : 8163
Confirmation No. : 7755
Customer No. : 27752
Title : Transfer-Resistant Makeup Removing Compositions

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This amended Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief dated November 6, 2006, and in support of the Notice of Appeal originally filed via facsimile on February 17, 2006. Timely response to the Notification is provided up to and including December 6, 2006.

The Notification indicated that the amended Appeal Brief filed July 24, 2006 was defective for failing to contain the items required under 37 CFR §41.37(c)(1)(v) and 37 CFR §41.37(c)(1)(vii). Accordingly, Appellants have amended the Appeal Brief to comply with 37 CFR §41.37. Please consider the following Appeal Brief.

REAL PARTY IN INTEREST

The real party of interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
NOV 29 2006

2

STATUS OF CLAIMS

Claims 1-6 and 8-12 stand rejected and are pending in the present application. Claim 7 has been cancelled. Claims 1-6 and 8-12 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a method for removing transfer resistant make-up compositions comprising the step of applying a safe and effective amount of a make-up removing composition comprising: from 0.1 to 30% of a crosslinked siloxane elastomer, preferably having a particle size of from above 10 to about 200 microns (page 3, line 30 through page 8, line 16, and specifically page 7, lines 20-22 of the specification); from 10 to 80% of a solvent having a solubility parameter of less than or equal to about 9 (cal./cm³)^{1/2} (page 8, line 18 through page 9, line 2 of the specification); and from about 0% to about 95% water (page 10, lines 5-8 of the specification and original claim 1). Preferably, the make-up contains at least about 10% by weight of a silicone gum and/or resin (page 3, lines 21-25 of the specification).

The present invention further relates to a cosmetic removing wipe, comprising one or more layers of water-insoluble substrate; and a safe and effective amount of a make-up removing composition comprising; (i) from about 0.1 to about 30% of a non-spherical crosslinked siloxane elastomer said elastomer having a particle size of from above 10 to about 200 microns; (page 3, line 30 through page 8, line 16, and specifically page 7, lines 20-22 of the specification) (ii) from about 10 to about 80% of a solvent suitable for topical application to the skin having a solubility parameter of less than or equal to about 9 (cal./cm³)^{1/2}; (page 8, line 18 through page 9, line 2 of the specification) (iii) from about 0% to about 90% water; (page 10, lines 5-8 of the specification and original claim 1) and (iv) an emulsifier; (page 17, lines 17-33 of the specification) wherein the composition has a viscosity greater than about 20,000 cps (page 7, lines 9 - 13 of the specification).

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
NOV 29 2006

3

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of claims 1-6 and 8-12 under 35 USC §103(a) over Schulz (U.S. patent 5,654,362) in view of Dreschler (U.S. patent 6,071,503) in further view of Fowler (U.S. patent 5,534,265).

ARGUMENTS

- I. Claims 16 and 8-12 are patentable because there is no suggestion or motivation to modify or combine the references.

Appellants respectfully traverse the above rejection because there is no motivation to combine the references, as required in MPEP 2143.01. Second, the combined references do not teach or suggest all of the claim limitations, as required in MPEP 2143.03. Thus, the obviousness rejection given by the Examiner does not establish a *prima facie* case of obviousness. Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

There is no motivation to combine Schulz with Dreschler. The Examiner states that it would have been obvious to one of ordinary skill in the art to employ the elastomer disclosed by Schulz for removing transition resistant cosmetics. Appellants respectfully disagree. Schulz teaches siloxane gels made by reacting a $\equiv\text{Si-H}$ containing polysiloxane with an alpha, omega-diene. Dreschler teaches a cosmetic composition applied to the lips comprising the combination of organosiloxane resins and fluid diorganosiloxane resins with a volatile carrier.

The Examiner states that one of ordinary skill in the art would have been motivated to incorporate further amounts of cyclodimethicone with the elastomer solid described in Schulz, if necessary for the removal of transfer resistant cosmetics. Appellants respectfully disagree. The Schulz reference is primarily directed to deodorant compositions. Column 2, lines 20-21 of Schulz states that the materials are ideal for use in solid cosmetics such as antiperspirants and deodorants. The Schulz reference only mentions the use of its silicone elastomer as a color cosmetic remover in a laundry list of potential uses. Most of the specification and the examples are directed to antiperspirant and deodorant compositions. One skilled in the art would not look to Schulz's teachings

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

4

of solid antiperspirant and deodorant compositions to create a transfer resistant make-up removing composition.

One skilled in the art would have no motivation to combine Schulz's teachings of siloxane gels in an antiperspirant or deodorant composition with Dreschler's teaching of a cosmetic composition applied to the lips comprising organosiloxane resins and fluid diorganosiloxane resins. Therefore, Appellants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited references.

II. Claims 16 and 8-12 are patentable because the combined references do not teach or suggest all of the claim limitations.

Appellants further respectfully traverse the above rejection because the Examiner does not establish a *prima facie* case since the combined references fail to teach an element of the claimed invention. Specifically, Schulz, Dreschler, and Fowler do not teach or suggest a method for removing transfer resistant make-up compositions comprising the step of applying a safe and effective amount of a make-up removing composition comprising from about 0.1 to about 30% of a *non-spherical* crosslinked siloxane elastomer having a particle size of from about 10 to about 20 microns; from about 10 to about 80% of a solvent suitable for application to the skin having a *solubility parameter of less than or equal to about 9 (cal./cm³)^{1/2}*; optionally, water; and an emulsifier, wherein the composition has a *viscosity greater than about 20,000 cps.* (emphasis added). None of the prior references teach or suggest a non-spherical crosslinked siloxane elastomer in combination with a solvent having a specific solubility parameter, wherein the composition has a specific viscosity.

The Examiner states that the optimal amounts of a cosmetic ingredient (i.e. the elastomer) or the viscosity of a cosmetic composition is considered within the skill of the artisan. Appellants respectfully disagree. Factors including the amount of elastomer present, the particle size of the elastomer, the amount of solvent present, the solubility parameter of the solvent, and the viscosity of the composition are all directly related to the composition's ability to act as a transfer resistant make-up removing composition. As stated above, Schulz is directly related to a solid deodorant or antiperspirant composition.

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

NOV 29 2006

5

Thus, one skilled in the art would not optimize a deodorant or antiperspirant composition in developing a transfer resistant make-up composition.

The Examiner also states that using non-spherical particles would have been obvious. Appellants respectfully disagree. As described on page 8, lines 10-18 of the specification, the non-spherical crosslinked siloxane elastomers of the present invention are thought to provide preferred rheology and film properties in order to achieve the benefits of the present invention. Specifically, when forming the gel matrix or network, non-spherical particles swell and/or pack more tightly than spherical particles. There is no hint in the prior references that signifies consideration that non-spherical crosslinked siloxane elastomers of the present invention provide such benefits.

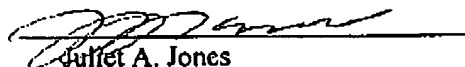
None of the prior references teach or suggest a method for removing transfer resistant make-up compositions comprising the step of applying a composition comprising a non-spherical crosslinked siloxane elastomer of a specific particle size in the amount claimed in the present invention in combination with a solvent having a specific solubility parameter, wherein the composition has a specific viscosity. Therefore, Appellants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited references.

SUMMARY

In view of all of the above, it is respectfully submitted that the aforementioned rejection is erroneous. The Board's reversal of the rejection is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY


Juliet A. Jones
Registration No. 54,202
(513) 626-2721

Date: November 29, 2006
Customer No. 27752

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
NOV 29 2006

6

CLAIMS APPENDIX

1. (Rejected) A method for removing transfer resistant make-up compositions comprising the step of applying a safe and effective amount of a make-up removing composition comprising:
 - (i) from about 0.1 to about 30% of a non-spherical_crosslinked siloxane elastomer said elastomer having a particle size of from above 10 to about 200 microns;
 - (ii) from about 10 to about 80% of a solvent suitable for topical application to the skin having a solubility parameter of less than or equal to about 9 (cal./cm³)^{1/2};
 - (iii) optionally, from about 0% to about 90% water and;
 - (iv) an emulsifier;wherein the composition has a viscosity greater than about 20,000 cps.
2. (Rejected) The method of Claim 1 wherein the transfer resistant make-up is silicone gum or resin based.
3. (Rejected) The method of Claim 2 wherein the make-up removing composition further comprises a skin conditioning agent.
4. (Rejected) The method of Claim 1 wherein the skin conditioning agent is selected from the group consisting of humectants, exfoliants, emollients and mixtures thereof.
5. (Rejected) The method of Claim 4 wherein the skin conditioning agent is a humectant.
6. (Rejected) The method of Claim 5 wherein the humectant is selected from the group consisting of propylene glycol, dipropylene glycol, polypropylene glycol, polyethylene glycol, sorbitol, hydroxypropyl sorbitol, hexylene glycol, glycerin,

Appl. No. 09/902,048

Docket No. 8163

Original Appeal Brief dated July 24, 2006

Reply to Office Action mailed on June 28, 2006

Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006

Customer No. 27752

7

1,3-butylene glycol, 1,2,6-hexanetriol, ethoxylated glycerin, propoxylated glycerin and mixtures thereof.

7. (Cancelled)
8. (Rejected) The method of Claim 1 wherein the emulsifier is polyoxyalkylene copolymer.
9. (Rejected) The method of Claim 8 wherein the polyoxyalkylene copolymer is dimethicone copolyol.
10. (Rejected) The method of Claim 1 wherein the crosslinked siloxane elastomer is a mixture of non-emulsifying and emulsifying crosslinked siloxane elastomers.
11. (Rejected) The method of Claim 1 wherein makeup removing compositions further comprises an active selected from the group consisting of peptides, palmitoyl-oligopeptide, farnesol, bisabolol, phytantriol, glycerol, urca, guanidine, ascorbic acid, vitamin A, vitamin E, vitamin B₃, vitamin B₅, sunscreens, anti-acne medicaments; antioxidants, flavonoids, skin soothing and healing agents, chelators, sequestrants, opacifiers and mixtures thereof.
12. (Rejected) A cosmetic removing wipe, comprising:
 - A. one or more layers of water-insoluble substrate; and
 - B. a safe and effective amount of a make-up removing composition comprising:
 - (i) from about 0.1 to about 30% of a non-spherical crosslinked siloxane elastomer said elastomer having a particle size of from above 10 to about 200 microns;
 - (ii) from about 10 to about 80% of a solvent suitable for topical application to the skin having a solubility parameter of less than or equal to about $9 \text{ (cal./cm}^3)^{1/2}$;
 - (iii) optionally, from about 0% to about 90% water;
 - (iv) an emulsifier;

Appl. No. 09/902,048

Docket No. 8163

Original Appeal Brief dated July 24, 2006

Reply to Office Action mailed on June 28, 2006

Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006

Customer No. 27752

8

wherein the composition has a viscosity greater than about 20,000 cps.

NOV-29-2006 13:56

BC IP DIVISION

5136261355 P.10/11

Appl. No. 09/902,048
Docket No. 8163
Original Appeal Brief dated July 24, 2006
Reply to Office Action mailed on June 28, 2006
Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
NOV 29 2006

9

EVIDENCE APPENDIX

None.

NOV-29-2006 13:57

BC IP DIVISION

5136261355 P.11/11

Appl. No. 09/902,048

Docket No. 8163

Original Appeal Brief dated July 24, 2006

Reply to Office Action mailed on June 28, 2006

Appeal Brief after 2nd Notification of Non-Compliant Appeal Brief dated November 29, 2006

Customer No. 27752

10

RELATED PROCEEDINGS APPENDIX

None.

**RECEIVED
CENTRAL FAX CENTER
NOV 29 2006**